IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIFTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 5758 of 1999

Between:

C.Kameswara Rao S/o C.Rama Rao
aged about 51 years, H.No.12-20-7,
Kothapet, Guntur.

..... PETITIONER

AND

1 Central Bank of India Rep.by tis Chairman and Managing Director, Chander Mukhi, Nariman Point, Mumbai-40002

2 The Regional Manager, Central Bank of India,
Benz Circle, Patamata, Vijayawada.

3 Branch Manager, Narsaraopet Branch
Central Bank of India Narasaraopet,
Guntur District

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order direction or writ, particularly one in the nature of Writ of Mandamus or any other appropriate writ declaring i) the proceeding dated 15th November, 1998 issued by the 3rd respondent Communicating forfeiture of gratuity is illegal and arbitrary; ii) declaring the action of the respondent in not releasing encashment of leaves due to the petitioner as on the date of discharge as illegal and arbitrary; iii) declare that the petitioner is entitled to gratuity under the payment of Gratuity Act and

iv) consequently direct the respondents to pay the gratuity payable to the petitioner together with interest and arrange for payment of leave encashment.

Counsel for the Petitioner: MR.G.VIDYASAGAR
Counsel for the Respondents: MR C.V.RAJEEV REDDY

The Court made the following :

ORDER

Heard Mr.G.Vidyasagar, learned counsel appearing on behalf of the petitioner and also Mr.C.Rajeev Reddy, learned counsel appearing on behalf of the respondents 1 to 3.

The petitioner who has been the employee of the respondent bank filed this Writ Petition *inter alia* seeking to assail the proceedings, dated 15-11-1998, by way of Writ of Mandamus where under the amount of gratuity payable to the petitioner has been forfeited.

The facts which are not in dispute and required for disposal of this Writ Petition is that initially the petitioner was appointed as Clerk in March, 1973 in the respondent bank and thereafter, he was promoted to the post of Officer in 1987. However, on certain allegations and also framing of charges, an enquiry was conducted and the petitioner was discharged from service under its own regulations holding that the petitioner is guilty of all the three charges. The said order of discharge has remained unchallenged. Subsequently, the petitioner has filed applications including one on 25-09-1998 seeking for payment of gratuity which he is entitled to under the law. However, as per the impugned order, dated 15-11-1998, the said amount has been forfeited as per the Board resolution. Hence the Writ Petition.

The learned counsel for the petitioner submits that having regard to the fact that final orders have already been passed and punishment was imposed as long

back as on
18-07-1990, there is no question of withholding the gratuity amount to which the petitioner is entitled to under the law.

The learned counsel for the respondents submits that as per the Board resolution, dated 14-07-1992, it has decided to forfeit the gratuity amount since the bank has suffered loss. Therefore, the petitioner is not entitled to any such amount.

Considering the submissions made and on perusal of the record, the only question which has to be considered is whether on the facts and circumstances, the petitioner is entitled for gratuity amount for the services rendered by him?

There is no dispute of the fact that the petitioner joined service with the respondent bank in March, 1973 and has almost put in more than 17 years of service. Subsequently after framing of charges and conducting an enquiry, the petitioner was discharged from service on 18-07-1990 and the said order admittedly remained unchallenged. Even though the authorities in the said enquiry varied the same, however, punishment of discharge of service was imposed and nothing else or nothing more. Even though the petitioner has filed representations, ultimately under the impugned order, it is stated that the amount is forfeited and such forfeiture is sought to be passed by the respondent in view of the resolution passed by the Board on 14-07-1992. It is pointed that there is nothing on record to show that any notice is given to the petitioner either before passing any such order of forfeiture or there is any enquiry. In spite of the allegations made in the charge sheet, there is nothing on record to show that the order is duly communicated.

The learned counsel for the respondents sought to take shelter under Section 4 (6) (a) of the Payment of Gratuity Act, 1972 (for short ‘the Act’) where under it was contemplated that in the event of loss sustained by the employer, the

amount of gratuity always be forfeited. However, the fact remains that the aspects especially as to whether there is any loss and secondly whether there should be any such forfeiture of amount, these are the matters of nature which cannot be decided or taken on one sided. Further once a punishment has already been imposed in respect of some allegations, the question of imposing any other punishment is in violation of Principles of Natural Justice. Admittedly, in this case no enquiry was conducted nor any orders are passed without giving any notice or opportunity to the petitioner. Even in regard to the loss as contended on behalf of the respondents, the learned counsel for the petitioner sought to place reliance on the letter dated 10-12-1993 issued by the respondents themselves and also letter of the original complainant dated 22-01-1992 where from it cannot be said that there was any such loss. However, having regard to the fact that there is no such enquiry, it is not necessary to go into any of these allegations at this stage in view of the fact that there was no such order passed following the Principles of Natural Justice and also which in fact amounts to a serious imputation. In the circumstances, it has to be held that the impugned order is wholly unsustainable and the same is liable to be set aside.

Accordingly, the Writ Petition is allowed setting aside the impugned order, dated 15-11-1998. The respondents are directed to pay the gratuity amount within a period of two months from the date of receipt of a copy of this order. It is however, open for the respondents to conduct any fresh enquiry by giving due and sufficient opportunity to the petitioner and pass orders if they choose to do so under Section 4 (6)(a) of the Act. No costs.

15-03-2005.

Hsd

Note: Issue CC in one week

B/o

Hsd

That Rule Nisi has been made absolute as above.

Witness, the Hon'ble Sri Devinder Gupta, the Chief Justice, on this Tuesday, the Fifteenth day of March, 2005.

Asst. Registrar

To

1 TheChairman and Managing Director, Central Bank of India
Chander Mukhi, Nariman Point, Mumbai-40002

2 The Regional Manager, Central Bank of India,
Benz Circle, Patamata, Vijayawada.

3 Branch Manager, Narsaraopet Branch
Central Bank of India Narasaraopet,
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